

S.B. CIVIL MISC. APPEAL NO.1990/2006
(The New India Assurance Company Ltd. Vs. Chain Singh & others.)

Date of Order :: 05.01.2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Anil Bachhawat for the appellant
Mr.Anuj Sahlot for the respondents

In this appeal by the insurer against the award dated 31.07.2006 made by the Motor Accidents Claims Tribunal (Addl. District Judge (Fast Track) No.5) Udaipur, H.Q. Salumber in Claim Case No.494/2005 essentially questioning the quantum of compensation awarded, affected parties i.e. the claimants have put appearance in caveat and in view of consensus stated by the learned counsel for parties, the matter is disposed of finally while dispensing with service on other proforma respondents.

For awarding compensation on account of accidental death of Smt.Shanti, mother of the claimants, the Tribunal has found the age of the deceased at about 35 years and her working as Class-IV employee in Government Secondary School, Tidi, Udaipur having salary of Rs.4,090/- per month and after deductions having net income of Rs.3,615/- per month. The Tribunal after providing for future enhancement

has taken her average monthly income at Rs.6,000/- per month and deducting one-third on her personal expenditure, has taken dependency of the claimants at Rs.4,000/- per month and by application of multiplier of 17 to the multiplicand of Rs.48,000/- per annum has assessed pecuniary loss at Rs.8,16,000/-. The Tribunal has allowed Rs.20,000/- towards non-pecuniary loss to the claimants and their natural guardian sister Smt.Sonal Kanwar who has not independently got herself impleaded as a claimant. The Tribunal has further allowed Rs.2,000/- towards funeral expenses and thereby assessed total loss at Rs.8,38,000/-; and after deducting Rs.50,000/- received by the claimants under 'No Fault Liability' has made award for the remaining amount of Rs.7,88,000/- together with interest at the rate of 6% per annum from the date of filing of claim application i.e. 13.10.2003.

The insurer has assailed the award aforesaid being highly exorbitant and excessive and being against settled legal principles. On the matter being taken up for motion hearing, Mr. Anuj Sahlot learned counsel appearing in caveat for the claimant-respondents Nos.1 to 3 in all fairness conceded that the award on its quantification of compensation stands on a higher side and submitted that the same may be re-stated while allowing compensation in the sum of

Rs.7,15,000/- with interest at the rate of 6% per annum from the date of filing of claim application. Learned counsel Mr. Anil Bachhawat appearing for the appellant-insurer, on instructions, and in equal fairness has agreed to the proposition put forward by Mr. Sahlot and submitted that the award may be suitably modified. Learned counsel for the parties have placed on record the terms of settlement arrived at between the parties for suitable modification of the award.

Having examined the impugned award, this Court is satisfied that the figure arrived at by the parties in consensus remains that of just compensation admissible in this case and the award deserves to be modified accordingly.

The deceased was about 35 years of age and the Tribunal has proceeded to apply the multiplier of 17 on the assumption as if she was below 35 years of age but there is no material on record to find that she was below 35 years of age and in the overall circumstances of the case, application of multiplier of 16 appears appropriate. Further, if the loss of contribution is taken on the basis of basic salary and dearness allowance and a component of future prospects 1.5 times is also provided; the multiplicand deserves to be taken reasonably at about Rs.43,000/- per annum on the basis of

average monthly loss of contribution at Rs.3,615/-. With application of multiplier of 16, the pecuniary loss reasonably stands at Rs.6,88,000/- (Rs.43,000/- x 16). Allowing reasonable component towards non-pecuniary loss and funeral expenses, this Court is of opinion that amount of Rs.7,15,000/- settled by the parties in consensus represents the amount of just compensation. The award made by the Tribunal in the sum of Rs.8,38,000/- obviously stands much in excess of reasonable compensation allowable in this case.

Therefore, the amount of Rs.7,15,000/- agreed to by the parties deserves to be allowed as just compensation and after deducting Rs.50,000/- already paid towards No Fault Liability, the claimants shall be entitled for an amount of Rs.6,65,000/- with interest at the rate of 6% per annum from the date of filing of claim application.

Accordingly, this appeal succeeds to the extent indicated above and with the consent of parties, the award is modified and re-stated allowing compensation in the sum of Rs.7,15,000/- to the claimants who shall be entitled to the remaining amount of Rs.6,65,000/- with interest at the rate of 6% per annum from 13.10.2003, the date of filing of claim application.

The remaining amount payable under the modified award shall be deposited by the insurer within 30 days from today with the Tribunal and the Tribunal shall proceed with apportionment and disbursement as contemplated by the impugned award. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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